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| CCC-334 (06-29-04) | | U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation | | 1. FEED DEALER'S NUMBER | |
| NONFAT DRY MILK RESTRICTED USE SALES AGREEMENT | | | | | |
| <p>NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is Section 4 and 5 of the Commodity Credit Corporation (CCC) Charter Act and Section 165 of Federal Agricultural Improvement and Reform Act of 1996. The information will be used to complete the terms of this Sales Agreement between the Feed Dealer and FSA. Furnishing the requested information is voluntary, however, without it, eligibility to enter into an Agreement with CCC cannot be determined. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 1014, 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.</p> <p>According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0244. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. RETURN THIS COMPLETED FORM TO THE KANSAS CITY COMMODITY OFFICE, P.O. BOX 419205, Mail Stop 8718, KANSAS CITY, MO 64141-6205 OR FAX TO 816-823-1805.</p> | | | | | |
| 2A. NAME OF FEED DEALER | | | | | |
| 2B. FEED DEALER'S ADDRESS (Including Zip Code) | | | 2C. FEED DEALER'S STREET DELIVERY ADDRESS (Including Zip Code)* | | |
| 3A. POINT OF CONTACT (POC) FOR FEED DEALER | | | 3B. POC'S TITLE | | |
| 3C. POC'S TELEPHONE NUMBER (Including Area Code) | | | 3D. POC'S E-MAIL ADDRESS | | |
| 3E. POC'S FAX NUMBER (Including Area Code) | | | | | |

This Agreement is entered into by the Feed Dealer and the Commodity Credit Corporation (CCC) for sales of nonfat dry milk (NDM) for only those uses specified in this Agreement.

Part 1 - Sales Procedures

- A.** CCC will make CCC-owned denatured NDM available to the Feed Dealer at a cost of \$275.00 per 41,500 pounds. CCC will deliver the denatured NDM on a f.o.b. Feed Dealer's delivery location basis in 25 kg (55.115 lb.) bags; with title and risk of loss transferring to the Feed Dealer on delivery.
- B.** The Feed Dealer will contact Kansas City Commodity Office (KCCO) Dairy and Domestic Operations Division (D&DOD), telephone number (816) 823-1153, for instructions on ordering NDM.
- C.** The Feed Dealer agrees to purchase NDM which has been denatured to prohibit its use for human consumption. Use of this NDM for human consumption or any other use not specified in this Agreement may result in the initiation of criminal proceedings against the Feed Dealer.

Part 2 - NDM Use:

- A.** NDM purchased under this Agreement:
 1. Shall **only** be used for foundation and feeder livestock feed for beef cattle, bison, goats, and sheep.
 2. May be bartered, exchanged or sold so long as the feed is used in an approved state and for an approved species,

* If there are additional Feed Dealer delivery locations, attach the list of addresses on a separate sheet to the back of this form.

3. May be processed outside the state allocated the NDM, provided the processed feed is returned from the processor to one of the states allocated the NDM under the 2004 NDM Livestock Feed Initiative for consumption; and,
4. May be fed to livestock temporarily housed outside the state allocated the NDM, provided the livestock is normally housed in-state.

B. NDM purchased under this Agreement shall **not** be used for any other purpose, including:

1. Processed for or used for human consumption;
2. Fed to dairy cattle, veal, poultry, swine, or fish;
3. Exported from the United States; or
4. Sold or otherwise provided to any person for use in a state other than a state allocated NDM under the 2004 NDM Livestock Feed Initiative.

C. The Feed Dealer:

1. Must take reasonable and practicable measures to ensure that the NDM is only used for foundation and feeder livestock feed as specified in Part 2.A. 1.
Note: CCC will deem as reasonable and practicable obtaining written certification from the producer attesting that the producer is eligible and that the NDM will only be used for eligible livestock under provisions of the 2004 NDM Livestock Feed Initiative.
2. Must, when bartering, exchanging, or selling NDM to parties other than eligible livestock producers, obtain a written agreement from such parties acknowledging proper use of the NDM.
3. Is not responsible for determining producer eligibility under the 2004 NDM Livestock Feed Initiative.

Part 3 - Shipping and Receiving

- A.** CCC is only responsible for delivering the NDM to the specified delivery point. CCC will arrange transportation **only** to the address(es) identified in Item 2C of this Agreement. Delivery to any other address is forbidden under this Agreement. CCC will pay only line-haul (point-to-point) transportation costs. CCC requires transportation companies to submit a proof of delivery as a condition of payment.
- B.** Feed Dealer is responsible for the unloading of palletized shipment. Feed Dealer will remove and dispose of dunnage. Feed Dealer agrees to pay the transportation company for any unloading service it requests of the transportation company. If Feed Dealer requests and transportation company driver agrees to restack product onto pallets or perform any other service in relation to unloading, Feed Dealer will be responsible for related charges. The Feed Dealer may be liable for detention or storage charges resulting from failure to unload the trailer timely, or failure to timely set up an unloading appointment. When receiving shipments, the Feed Dealer agrees to sign a proof of delivery when requested by the transportation company. A proof of delivery shall include, at a minimum, date delivered, number of units delivered in good order, and the signature of the person receiving the shipment. The Feed Dealer will receive a Notice of Delivery from CCC prior to shipment. The Feed Dealer will be invoiced by CCC based on the truckloads represented on the Notice of Delivery issued.

- C. The transportation company is responsible for unloading to the tailgate on non-palletized shipments. Transportation companies will normally give Feed Dealer a 24 hour notice of arrival. Transportation companies allow two hours for unloading palletized loads, and six hours for unloading non-palletized loads.

Part 4 - Financial Arrangements

- A. On a monthly basis, CCC will invoice the Feed Dealer for payment of the amount of NDM delivered to the Feed Dealer. Payment is to be remitted to CCC as directed on the invoice, or you may contact this office at 816-926-6205. If Feed Dealer fails to pay within the time period and conditions specified on the invoice, interest at the rate specified in the invoice shall begin to accrue and continue up to the date CCC receives payment.
- B. At the election of CCC, if the Feed Dealer fails to make arrangements for payment in accordance with this section, CCC may terminate all of the Feed Dealer's rights under this Agreement, and CCC may proceed against the Feed Dealer to recover any damages, including costs, CCC may have sustained.

Part 5 - Liquidated Damages

In the event of the breach of this Agreement by Feed Dealer, the Feed Dealer shall pay to CCC liquidated damages in an amount equal to \$0.50 per pound for each pound of NDM not used as provided in this Agreement, and shipments under this Agreement to the Feed Dealer shall be halted.

Part 6 - Disputes

- A. Any dispute concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the contracting officer. The contracting officer shall issue a decision in writing and mail or otherwise furnish a copy to the Feed Dealer. The contracting officer's decision shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Feed Dealer mails or otherwise furnishes to the Contracting Office a written appeal addressed to the Board of Contract Appeals, care of the Hearing Clerk, United States Department of Agriculture (USDA), 1400 Independence Ave., Stop 0601, SW, Washington, D.C. 20250. The decision of the Board of Contract Appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Part, the Feed Dealer shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. Pending final decision hereunder of a dispute, if performance under the Agreement has not been completed by the Feed Dealer or terminated by CCC, Feed Dealer shall proceed diligently with performance of the Agreement and in accordance with the contracting officer's decision.
- B. The provision of this section does not preclude consideration of any questions of law in connection with decisions provided for in Part 6A. Nothing in the Agreement shall be construed as making final the decision of any administrative official with respect to a question of law.
- C. If an appeal is filed by Feed Dealer from a final decision of the contracting officer under this section denying a claim arising under the Agreement, simple interest in the amount of the claim finally determined owed by CCC shall be payable to Feed Dealer. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, from the date Feed Dealer furnishes to the contracting officer the written appeal under this section, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to Feed Dealer of a supplemental Agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a Board of Contract Appeals.

- ## Part 7 - Assignments

Part 8 - Inquiries

Phone: 816-926-6050

CCC assumes no liability for acts committed by employees of the Feed Dealer.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.